

OPENNESS PROMOTES EFFECTIVENESS IN OUR NATIONAL GOVERNMENT ACT OF 2005
(“OPEN GOVERNMENT ACT OF 2005”) (CORNYN-LEAHY)

Led by U.S. Senators John Cornyn and Patrick Leahy, the OPEN Government Act of 2005 is a bipartisan effort to achieve meaningful reforms to federal government information laws – including most notably the Freedom of Information Act of 1966 (“FOIA”). If enacted, the legislation would substantially enhance and expand the accessibility, accountability, and openness of the federal government. It has been nearly a decade since Congress has approved major reforms to FOIA. Moreover, the Senate Judiciary Committee has not convened an oversight hearing to examine FOIA compliance issues since April 30, 1992. (The Senate Homeland Security and Governmental Affairs Committee, which shares jurisdiction over federal government information laws with the Judiciary Committee, has not held a FOIA oversight hearing since 1980.)

This legislation is the culmination of months of extensive discussions between the offices of Senators Cornyn and Leahy and members of the requestor community. The bill is supported by Texas Attorney General Greg Abbott and a broad coalition of organizations across the ideological spectrum, including:

American Association of Law Libraries	The Freedom of Information Foundation of TX
American Civil Liberties Union	The Heritage Foundation/Center for Media and
American Library Association	Public Policy
American Society of Newspaper Editors	Information Trust
Associated Press Managing Editors	League of Women Voters of the United States
Association of Alternative Newsweeklies	Magazine Publishers of America
Association of Health Care Journalists	National Conference of Editorial Writers
Center for Democracy & Technology	National Freedom of Information Coalition
Coalition of Journalists for Open Government	National Newspaper Association
Committee of Concerned Journalists	National Press Club
Education Writers Association	National Security Archive/George Washington
Electronic Privacy Information Center	University
Federation of American Scientists/Project on	Newspaper Association of America
Government Secrecy	People for the American Way
Free Congress Foundation/Center for Privacy &	Project on Government Oversight
Technology Policy	Radio-Television News Directors Association
Freedom of Information Center, University of	Reporters Committee for Freedom of the Press
Missouri	Society of Environmental Journalists

The Act contains important Congressional findings to reiterate and reinforce the view that the Freedom of Information Act establishes a presumption of openness, and that our government is based not on the need to know, but upon the fundamental right to know. The Act also contains over a dozen substantive provisions, designed to achieve the following four objectives:

- (1) Strengthen FOIA and close loopholes
- (2) Help FOIA requestors obtain timely responses to their requests
- (3) Ensure that agencies have strong incentives to act on FOIA requests in a timely fashion
- (4) Provide FOIA officials with all of the tools they need to ensure that our government remains open and accessible

STRENGTHEN FOIA AND CLOSE LOOPHOLES

- Ensure that FOIA applies when agency recordkeeping functions are outsourced
- Establish a new open government impact statement, by requiring that any future Congressional attempt to create a new FOIA exemption be expressly stated within the text of the legislation
- Impose annual reporting requirement on usage of the DHS disclosure exemption for critical infrastructure information
- Protect access to FOIA fee waivers for legitimate journalists, regardless of institutional association – including bloggers and other Internet-based journalists
- Provide reliable reporting of FOIA performance, by requiring agencies to distinguish between first person requests for personal information and other kinds of requests

HELP FOIA REQUESTORS OBTAIN TIMELY RESPONSES

- Establish FOIA hotline services, either by telephone or on the Internet, to enable requestors to track the status of their requests
- Create a new FOIA ombudsman, located at the Administrative Conference of the United States, to review agency FOIA compliance and provide alternatives to litigation
- Authorize reasonable recovery of attorney fees when litigation is inevitable

ENSURE THAT AGENCIES HAVE STRONG INCENTIVES TO ACT ON FOIA REQUESTS IN TIMELY FASHION

- Restore meaningful deadlines for agency action by ensuring that the 20-day statutory clock runs immediately upon the receipt of the request
- Impose real consequences on federal agencies for missing statutory deadlines
- Enhance authority of the Office of Special Counsel to take disciplinary action against government officials who arbitrarily and capriciously deny disclosure
- Strengthen reporting requirements on FOIA compliance to identify agencies plagued by excessive delay, and to identify excessive delays in fee status determinations

PROVIDE FOIA OFFICIALS WITH THE TOOLS THEY NEED TO ENSURE THAT OUR GOVERNMENT REMAINS OPEN AND ACCESSIBLE

- Improve personnel policies for FOIA officials to enhance agency FOIA performance
- Examine the need for FOIA awareness training for federal employees
- Determine appropriate funding levels needed to ensure agency FOIA compliance